Tower Automotive, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO. Case 7–CA–40071

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On May 28, 1998, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that Respondent violated Section 8(a)(1) and (3) of the Act by issuing a written verbal warning to employee William Haddley for engaging in protected union activity. The judge additionally found, however, that the conduct was de minimis, and thus the violation did not warrant issuing the usual order requiring the Respondent to cease and desist and to post a notice to employees. Consequently, the judge dismissed the complaint.

The General Counsel has excepted to the judge's finding that the Respondent's conduct was de minimis and to the dismissal of the complaint. We find merit in the General Counsel's exceptions.

The undisputed facts establish that Haddley was very active in a campaign to organize the Respondent's employees in the spring of 1997, and that the Respondent knew of his active support of the Union. On May 30, 1997,[1] employee Roman Alvarado received a union hat from Haddley which Alvarado then altered so that the slogan read "Vote No" rather than "Vote Yes." On the same day, or the following day, Alvarado repeatedly requested a union T-shirt from Haddley. Haddley initially ignored the requests. He eventually became angry, however, and on May 31, he called Alvarado a "spineless jelly fish" and a "worm." Alvarado complained to Haddley's supervisor, Martin Maiuri, regarding Haddley's remarks. Maiuri issued Haddley a warning, dated May 31, which stated that Haddley had violated a company rule prohibiting infractions of standards of dignity and respect towards other employees. At least five or six other employees were aware that the warning had been issued to Haddley.

In finding the warning unlawful, the judge found that Maiuri knew that Haddley's remarks to Alvarado were in response to Alvarado's opposition to the Union. The judge further found that although the Respondent maintained a rule prohibiting conduct disrespectful towards other employees, the Respondent had failed to show that it had disciplined other employees for engaging in conduct of a similar nature to Haddley's.

The judge further found, however, that the unlawful conduct was too insignificant to warrant the issuance of a remedial order. In this regard, the judge found that the discipline was meted out by a low-level supervisor and was extremely minor, and that—pursuant to the Respondent's usual practice—the Respondent had removed the warning from its files 6 months after it was issued, and consequently would no longer take it into consideration for future discipline. Accordingly, the judge recommended that the complaint be dismissed.

Contrary to the judge, we find that the Respondent's violation here warrants the issuance of the Board's usual remedial order. The judge's findings establish that the Respondent clearly violated Section 8(a)(1) and (3) by disciplining Haddley for conduct that was protected by the Act. That a low-level supervisor issued the warning does not make the Respondent's conduct insignificant. Indeed, as noted above, the record establishes that at least five or six other unit employees were aware that he was disciplined for engaging in protected conduct. Moreover, the fact that the Respondent had already removed the warning from its files does not eliminate the need for the usual remedy consisting of a cease-and-desist order and a notice-posting requirement. Specifically, the Respondent has in no way repudiated its unlawful conduct. See *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Thus, we find no basis for excusing the Respondent from its obligation to fully remedy its unlawful conduct. Accordingly, in order to effectuate the purposes of the Act, we do not adopt the judge's order dismissing the complaint and, instead, shall issue our usual remedial order for the above violation.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Tower Automotive, Inc., Plymouth, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing warnings to employees for engaging in protected union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[1] All dates are in 1997 unless otherwise stated.

[2] Because the record reflects that the warning has been removed from the Respondent's files, we shall not include our usual language requiring such removal

(a) Within 14 days from the date of this Order, notify William Haddley that the unlawful warning will not be used against him in any way.

(b) Within 14 days after service by the Region, post at its Plymouth, Michigan facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since May 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, dissenting.

I agree with the judge that the Respondent's unlawful conduct in the instant case was de minimis, and thus, contrary to the majority, I would adopt the judge's decision and dismiss the complaint.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT issue warnings to our employees for engaging in protected union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL , within 14 days from the date of the Board's Order, notify William Haddley that the unlawful warning will not be used against him in any way.

TOWER AUTOMOTIVE, INC.

[3] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Rozlyn Kelly and Michael O'Hearon, Esqs., for the General Counsel.

Thomas J. Barnes, Esq., (Varnum, Riddering, Schmidt and Howlett), of Grand Rapids, Michigan, for the Respondent.

BENCH DECISION AND CERTIFICATION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was heard before me on April 20, 1998, in Detroit, Michigan, upon a complaint dated October 30, 1997, alleging that the Respondent, Tower Automotive, Inc. violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by issuing a verbal warning to its employee Willie Haddley, because he engaged in union activities. The charge in support of the complaint was filed on July 29, 1997, by the Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO.

The Respondent, Tower Automotive, Inc. filed a timely answer admitting the jurisdictional allegations in the complaint. Also, admitted was the supervisory status of Cheryl Gronski, colleague growth and development leader, and Martin Mariuri, team leader. The allegation that the Company had engaged in unfair labor practices was denied.

I issued a bench decision on April 20, 1998, pursuant to Section 102.35(a)(1) of the Board's Rules and Regulations on the entire record in this proceeding, including my observation of the witnesses who testified and after due consideration of the oral arguments made by counsel for the General Counsel and counsel for the Respondent. In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of and attach hereto as "Appendix" the pertinent portions (pp. 149–158) of the trial transcript, as corrected and modified by me.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Tower Automotive, Inc., with an office and place of business in Plymouth, Michigan, is engaged in the manufacture and sale of automotive parts. With gross revenues in excess of $500,000 and purchases of goods valued in excess of $50,000 directly from points outside the State of Michigan, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2)(6) and (7) of the Act.

2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

3. By issuing a verbal warning to its employee Willie Haddley for having engaged in union related, verbal activity, protected by Section 7 of the Act, the Respondent violated Section 8(a)(1) and (3) of the Act.

4. This minor name calling incident between two employees, resulting in a verbal warning which had expired after 6 months pursuant to company policy, may be regarded as de minimus.

In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attached hereto as "Appendix" the portion of the transcript containing this decision. The Order is set forth below.

[Recommended Order for dismissal omitted from publication.]

APPENDIX

This case was tried before me on April 20, 1998, based upon a complaint alleging that the Respondent, Tower Automotive, Inc., has violated Section 8(a)(1), and 8(a)(3) of the Act because it issued a written verbal warning to it's employee, Willie Haddley.

The charges in support of the complaint were filed by the Union, The International Union United Automobile Aerospace and Agriculture Implement Worker's of America, UAW AFL–CIO, Case 7–CA–40071 on July 29, 1997.

The complaint alleges, and the employer admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. And, it is admitted that the Respondent, in conducting it's business operations, derived gross revenues in excess of 500,000, and purchased and received at it's Plymouth, Michigan facility, goods valued in excess of 50,000 directly from points outside of the State of Michigan.

The Respondent is a Corporation with an office and place of business, in Plymouth, Michigan, and is engaged in the manufacture and sale of automotive parts.

At all material times the Charging Party Union has been a labor organization within the meaning of Section 2.5 of the Act.

It is also admitted that certain supervisory personnel were supervisors within the meaning of Section 2(11) of the Act, to wit Cheryl Gronski, colleague growth and development leader, is a supervisor, so is Martin Maiuri, who is a team leader, an admitted supervisor.

I think the parties are in agreement that Martin Maiuri, the team leader, issued a written verbal warning on May 31, 1997, to Willie Haddley, the employee and that it was based upon a remark that Mr. Haddley had made to a fellow employee by the name of Roman Alvardado.

Basically, I'm making this decision based upon the consideration of the entire record in this case, the testimony, and the oral argument.

Mr. Haddley was the first witness, he was the only witness for the General Counsel, and he testified basically, that he was employed since July 29, 1996, as material handler on the second shift. Haddley had initiated the union campaign, according to his testimony, which lasted from February to March, 1997. He had called the Union hall, and met with Oten Wyatt, and both prepared union flyers, union material for distribution at the plant. The union flyers are in the record as General Counsel's Exhibit 2. The parties stipulated then, that Haddley was an active union supporter and he had engaged in union activities that were known to the Respondent.

The evidence shows that Mr. Alvarado, an employee, had, on several occasions, asked Haddley for union paraphernalia.

Mr. Haddley had given him a union hat which Alvarado has changed, so that instead of reflecting a prounion slogan, the hat reflected a vote "no union" slogan. Mr. Alvardado did not dispute that testimony.

Mr. Alvarado and Mr. Haddley also agree in their testimony that on several occasions, Alvarado has requested additional union paraphernalia, to whit, union T-shirts. In this regard, Mr. Haddley ignored Alvarado's requests.

Haddley testified that at one point, Alvarado made a third request for a union T-shirt, Mr. Haddley told him that he was not going to give him the T-Shirt, because he thought he had the spine of a jellyfish or a worm and that he was not going to give him a T-shirt. Haddley admitted that he did make those statements and he basically agreed that he made those remarks to Mr. Alvarado.

The record contains the testimony of three witnesses for the Respondent. Roman Alvarado testified that he had been a 1-year employee there, that he was an electro-robotics technician, worked on the second shift and that, according to his testimony, at 4 o'clock on May 31, or thereabouts, Mr. Haddley was operating his Lo-Boy and at one point, while Alvarado was standing there with several coworkers, Haddley signaled to him to come over to him. At which point then, Mr. Haddley said to him—made a remark to him, saying, "What is the difference between a jellyfish and a worm and you?" And stating that they're spineless. According to Mr. Alvarado, Haddley called him spineless several times.

At that point, Mr. Alvarado took offense at that and went to his team leader, Maiuri, and complained about these remarks.

And then there was the testimony of Martin Maiuri, who testified at approximately 4:30 of the same date, namely May 31, that he had a meeting with both employees, that there was a remark made by Mr. Haddley. Mr. Alvardado complained about being called a spineless worm and a jellyfish, and that Mr. Maiuri then indicated that he would issue a verbal warning.

Mr. Maiuri initially said that the reason for the remark by Mr. Haddley was because Alvarado was defacing things. Mr. Maiuri then became a little incoherent and uncertain about his testimony and I think may have tried to fudge his testimony slightly, but he then ultimately conceded that he was aware that the remark about the jellyfish and the worm and the spinelessness had to do with defacing things. In other words, he was aware that it was a union-related incident. His testimony that it had nothing to do with the Union activity, as far as he was concerned, was not true. I think Maiuri was aware that it had something to do with Haddley's Union activity.

Cheryl Gronski was the last witness and I found her testimony credible. She disagreed that there were prior written or verbal warnings in the personnel record of Mr. Haddley, and that any matters that had been testified about occurred after this incident, and therefore, were not relevant to this inquiry here.

We have, in short or in summary, a situation which shows a union campaign, which shows that one of the active union participants was disciplined by the Respondent, and received a verbal warning by his immediate supervisor, Mr. Maiuri. And I think that it's important to realize that it was his immediate supervisor and not anyone higher up.

It is significant also, that this Employer has a policy which prohibits infractions of standards of dignity and respect for employees.

Nevertheless, I think the evidence shows that Mr. Maiuri knew about the union activity of Mr. Haddley and that comments of this kind are generally protected under the Act. I agree with the General Counsel that this was protected activity, to make such remarks in the context of a union campaign, particularly because the case here shows that the remarks had to do with a union T-shirt, and with the defacing of the union hat, and therefore, this was not just an outright insult or coming out of

the blue sky, but it was essentially a brief colloquy between a prounion employee and an employee who was antiunion.

And Mr. Maiuri should have been aware of that, that this conduct was protected. He, nevertheless, issued a verbal warning. And, therefore, I find that there was a violation of Section 8(a)(1) and 8(a)(3) of the Act.

The Respondent's effort to show that even in the absence of any union activity that the same events would have taken place was not persuasive. In any case, the Respondent has failed to make convincing showing that there were disciplines meted out because of conduct that may have been similar in nature, that is such minor violations with regard to the respect and dignity of employees.

While I find that technically there was a violation of the Act, I feel that this case does not rise to the level of a violation that requires a notice and a formal order of violation. I have considered, in this regard, the fact that this was a vigorous union campaign and that the only thing I have before me is this verbal warning which is now expired.

I have also considered that Mr. Haddley was not the principal and not perceived as a principal union activist, but he was a very strong union supporter.

The discipline was extremely minor. We have here a mere verbal warning that was reduced to writing that in the meantime has disappeared because there's a 6 months rule and it no longer exists.

The testimony of Ms. Gronski was specific and clear that this matter will not and should not be taken into consideration for any future violations that may occur. And therefore, this discipline no longer exists.

So, we're really talking about a name-calling situation where the parties have drawn a line in the sand and are trying to position themselves of who's right and who's wrong.

I consider it significant that Mrs. Gronski openly disagreed with Respondent's other witnesses, namely to the extent that other witnesses testified that there was prior misconduct of similar nature by Mr. Haddley, she corrected the record and testified that, that misconduct occurred after that. So basically, we're dealing here with a one time written/verbal warning that was given by the Respondent to Mr. Haddley without any prior misconduct.

Here, where a higher official disagrees with a lower official in a rather significant respect, indicates to me, at least on this record before me, that there was not an outrageous set of violations that higher management was engaged in against union organizers.

In making this decision to dismiss this case, I also believe that, to some extent, Mr. Haddley's testimony was somewhat incoherent, not entirely reliable because there was some inconsistencies in his testimony.

But again, the record shows that this employee is now in good standing, working for the company. He has a job without any prior record and I believe that in the interest of labor peace between the two parties here, between the Union, between Mr. Haddley, and between management of this company, justice is really better served by dismissing this matter.

So—I should reemphasize that because the discipline was meted out by a low-level supervisor, rather than higher level supervisory personnel, and because he may have reacted in haste because someone came to him and complained about another person. So, it's always easier to react to someone's complaint than to consider this matter in a more aloof and considerate fashion. He may have overreacted. I just give him the benefit of the doubt in that regard, as I see it, this case should be dismissed for those reasons.

Other than the fact that I believe that it's in the interest of justice and that the allegations, are, in my opinion, de minimus, I would have found a violation of Section 8(a)(1) and 8(a)(3) of the Act, as I said.

Is there anything else what I should address?

Ms. Kelly?

MS. KELLY: Not that I can think of.

JUDGE BUSCHMANN: And Mr. Barnes?

MR. BARNES: No, I think you've covered it, Your Honor.

JUDGE BUSCHMANN: Okay. The case is hereby—the complaint is hereby dismissed, the case closed.

(Whereupon, at 4:00 p.m., the hearing was concluded.)